IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1187 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

KESHAVLAL LALLUBHAI BALSARA - Appellant(s)
Versus
YUSUF GARGE & 1 - Defendant(s)

==========

Appearance :
MR DR BHATT for Appellant(s) : 1,
None for Defendant(s) : 1,
MR PV NANAVATI for Defendant(s) : 2,
MR VIBHUTI NANAVATI for Defendant(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 31/07/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and award dated 12.12.1985 passed by the M.A.C. Tribunal at Navsari, in M.A.C. Petition No. 372 of 1984 whereby the said petition has been partly allowed against the original opponent No. 1 only.

2. The shorts facts of the case are that the appellant is the owner of the house bearing Municipal

House No. 8/401 situated at Valsad. On 21.06.1984 at about 2.00 p.m. The driver of the truck bearing Registration No. MRL 8102 had taken the said truck in reverse and had thereby damaged the said house causing sufficient damage to the eastern wall, door and pillers of the said house. Therefore the appellant has filed the claim petition for sum of Rs. 10,000/-.

3. Learned advocate for the appellant has submitted that judgement and award of the Tribunal in so far as it exonerates the Insurance Company is bad in law. He further submitted that Tribunal has also erred in law in not properly appreciating the ratio of judgement reported at 1972 A.C.J. Page 79.

4. While passing the judgement the Tribunal has relied upon the decision of Madras High Court in the case of ***N. Palaniswamy V. Ranaswamy and others reported in 1981 ACJ page 115*** whereby the Tribunal has observed that the applicant was knowing the name of the driver since the vehicle belonged to him and since he had not disclosed the name of the driver and had not produced the licence, it was not possible for the Insurance Company to verify

it and to prove it. Therefore, it was found that the Insurance Co. was rightly exonerated. Further Tribunal has observed in para 16 as under:

> “This decision will also be applicable to the facts of the present case, because, the opponent No. 1 is the owner of the motor truck no. MRL 8702 which is insured with the opponent No. 2. he was served by the Insurance company with a registered notice to disclose the name of the driver and also to disclose whether he was holding any valid licence. The copy of the said notice along with the postal acknowledgement are produced with the documentary list Ex. 16. The opponent No. 1 has not appeared to contest this petition and has also not produced any evidence to show the name of the driver who was driving the said motor truck at the relevant time and also to show that he was holding a valid driving licence. Therefore, the Insurance company had taken the ground about the driver not holding valid driving licence and when the driver is not joined as a party, I think that in view of the above cited Madras High Court decision, the Insurance Company cannot be made liable jointly or severally to pay the compensation.”

In the hearing the learned Counsel for the appellant is not able to point out anything contrary to take a different view of the matter.

5. In view of the above finding I am of the view that the Trial Court has not committed any error in passing the impugned order. I am in complete

agreement with the reasonings adopted and the findings arrived at by the trial court. No case is made out to cause interference. Hence the appeal is dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*